IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 447 OF 2004

Abid Hussain Meherbankhan ... Petitioner
vs.
Chhotekhan Ghasikhan. .. Respondents

Mr. R.A. Jahagirdar with R.N. Kachare
for the petitioner.
Mr.S.B. Prabhavalkar with N.V. Khatri
i/by Khatri & Co. for Respondents.

CORAM : S.U. KAMDAR, J.
DATE : 21ST DECEMBER, 2004

P.C.

1. In the present petition the award passed by the learned arbitrator has been challenged essentially on two grounds, (i) that the arbitrator has not taken into consideration and given a finding on the question which has ben specifically referred while passing an order under section 11 of the Arbitration and Conciliation Act, 1996. The learned counsel for the petitioner has drawn my attention to the order dated 2.5.2003 passed by this Court on Arbitration Application No. 60 of 2003 in which the

learned Single Judge has stated as under :-

> "Justice K.K. Baam retired Judge of this Court is appointed as Sole Arbitrator to decide all disputes arising between the parties arising out of this agreement including contention of the Respondents that there is no arbitral clause and accordingly claims are not arbitrable."

2. According to the learned counsel for the petitioner, the learned arbitrator has not considered the contention that there is no valid arbitration agreement and therefore award is liable to be set aside. However, in my opinion, issues which are framed by the arbitrator in respect of the validity of the partnership deed and/or the contention whether it is forged or not in issue nos. 1 to 4 set out on page no. 37 of the petition and the discussion which has been made in respect of the said aspect inter alia indicates that the learned arbitrator has considered the issue whether there is a valid arbitration agreement between the parties or not. The arbitration agreement is a clause in the deed of partnership and what was challenged by the petitioner was the validity of the agreement itself and, therefore, consequential validity of the arbitration agreement. Having given the finding that there was a valid deed of partnership the

automatic answer follows that there was a valid arbitration agreement between the parties. Thus I do not see any merits in the contention advanced by the learned counsel for the petitioner and, therefore, reject the same.

3. The next contention which has been canvassed by the learned counsel for the petitioner is that the finding of the arbitrator in paragraph 32 of the award inter alia refusing to accept the evidence of the hand writing expert on the ground that he was not familiar with the script which was Urdu is a serious error of law and therefore, requires to be interfered with under Section 34 of the Arbitration Act, 1996. The learned counsel for the petitioner submits that this is a substantial question of law which requires to be considered in arbitration petition under section 34 of the Arbitration and Conciliation Act, 1996. In my view, the finding given by the learned arbitrator in para. 33 of the award is based on evidence and material on record before the arbitrator. The learned arbitrator has considered the evidence and has found that the evidence of the hand writing expert was not reliable and was not believable and accordingly discarded the same. Such inference which has been drawn on the basis of the material and evidence on record by the learned arbitrator is essentially a finding of fact and in a arbitration petition under Section 34 of

the Arbitration and Conciliation Act, 1996, such a finding of fact cannot be interfered with. Save and except the above points, no other point was urged by the learned counsel for the petitioner. In light of the aforesaid view of the matter, I do not find any merit in the writ petition. The petition is accordingly dismissed. No order as to costs.